

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
June 11, 2009

MEETING HELD IN THE GRACE GOUVEIA BUILDING

Members Present: Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard.

Members Absent: None.

Others Present: Ilana M. Quirk, Esq., (Town Counsel), David Gardner (Assistant Town Manager), Russ Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Patrick Eleey called the Work Session to order at 6:47 P.M.

CONTINUED CASES:

Patrick Eleey announced the following agenda item:

2009-20 90 Shank Painter Road (General Commercial Zone), The Community Builders, Inc. on behalf of the Town of Provincetown –

The applicant under M.G.L. c. 40B, section 21, seeks the approval of a Comprehensive Permit to construct six buildings on a vacant 2.5 acre site for the development of a 50-unit, mixed-income, residential rental complex to consist of twenty-five one-bedroom units, twenty-one two-bedroom units and four three-bedroom units and approximately 2500 square feet of commercial/retail usage. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Joe Longo, from Horsley and Witten, Jan Brodie, of TCB, and Attorney Kate Mitchell appeared to discuss the application. The applicant had completed a new drawing of the project per the request of the Board. Mr. Longo explained the new drawing to the Board. Ms. Brodie read a letter from Sean Redfern, the project's designer, stating his objection to the proposed plan change.

Board Discussion: The Board discussed the following topics related to the project:

- New Configuration – The Board discussed the new configuration and questioned Mr. Longo, Ms. Brodie and Attorney Mitchell.
- Commercial Spaces - The Board discussed with the applicant what kind of activity might occupy the commercial spaces. The applicant agreed to brainstorm the issue further and Attorney Mitchell said she would try and come up with some language regarding that issue.
- Traffic – The traffic issue was discussed in light of the new configuration. The Board discussed the traffic study to be undertaken by the CCC this summer concerning the Shank Painter corridor.

Patrick Eleey moved to reject the new configuration of the project as presented by The Community Builders, Inc., Robert Littlefield seconded and it was so voted, 3-2 (Amy Germain and Elisabeth Verde opposed).

- Department of Public Works Letter - Amy Germain read a letter from the DPW into the record. The letter contained a review of the adequacy of the water, waste water and the adequacy of on-site drainage for the project. The Board had also been given a Proposed Stormwater Management Plan for the site, as prepared by the Horsley Witten Group, Inc. Attorney Mitchell pointed out

that the drainage calculations for the project had inadvertently been omitted from the application.

These calculations are usually sent out to whoever is performing the peer review in order to confirm that there will be no net increase in the rate and volume in run-off when pre-construction conditions are compared to post-construction conditions. The DPW did not have access to those figures before their review was written. The applicant has since sent those calculations to the DPW. The Cape Cod Commission's review of the drainage issue, without the drainage calculations, had been signed by a senior planner and not a professional engineer. David Gardner will contact David Guertin to find out if he can do the peer review with the requisite drainage calculations. The applicant will send the drainage calculations to the CCC for the hydrologist's review. Attorney Mitchell reminded the Board that the applicant had not asked for any waivers from the Town's by-laws or requirements regarding the water, the sewer or drainage systems at the site and the applicant intends upon abiding by all relevant regulations.

- Emergency Exit – The Board discussed what the emergency exit off of Province Road would look like and what kind of material would be placed on the ground in order that emergency vehicles could access the site safely and quickly. Mr. Longo addressed that issue and the proposed material to be used. Plowing of that area was also discussed.
- Use of Province Road – There was a letter from an abutter concerning the idea of accessing the site from Province Road, including the use of the road for access by construction equipment. The applicant agreed that if the applicant uses the road and there is any damage to it as a result of that use, then the applicant would be liable for any repair to the road that are needed. The applicant is also willing to obey the Town's by-law regarding allowed construction times.
- David Bennett's Report – The Board briefly discussed Mr. Bennett's conclusion regarding the remediation of the site, the site monitoring plan and his recommendations to the Board regarding the ground lease. Attorney Quirk pointed out that not only is there a geo-synthetic cap on the old burn dump, but the buildings, roadway and parking lots will serve as a cap as well. Attorney Mitchell added that there will be a licensed site professional there during construction for consultation. The Board discussed the restriction against the growing of plants for consumption and how this prohibition might be communicated to the residents of this neighborhood, including putting it in the lease for the units.
- Monetary Surplus – The Town gets 10% of the cash flow from the rental operations. TCB gets a portion of the surplus as well.
- Sign Waiver – The applicant is looking for a waiver from the sign by-law and seeks to install two signs, one to identify the residential portion and one to identify the commercial sections of the project. The Board discussed the issue, noting that the Planning Board had supported the granting of this waiver. Russ Braun briefly reviewed the by-law with the Board.
Patrick Eleey moved to grant a waiver for signage of up to 32 square feet, Anne Howard seconded and it was so voted, 5-0.
- Sidewalks – The Board discussed the recommendation of the Planning Board that a sidewalk be built on Shank Painter Road from Cumberland Farms to Province Road. The applicant is willing to install a sidewalk running the length of their property.
- Pedestrian Safety Improvements – The Planning Board recommended a condition to include a crosswalk and appropriate signage at the driveway entrance to the site. The Board supports this recommendation and the applicant agreed to it.
- Police Chief's Recommendation - The Planning Board recommends that the Zoning Board defer to the Police Chief's recommendation concerning traffic in the area and the traffic study of Shank Painter corridor to determine whether a traffic light is needed at the driveway entrance to the site.

- Recreational Area – The Board discussed with the applicant the Planning Board’s recommendation of providing a children’s play area on site. The applicant agreed to set aside not a playground, per se, but rather a recreational area. The Board requested that the area be open to the public and fenced-in with a gate. This subject is in the draft decision to be discussed and Attorney Quirk has gotten an idea of what the Board wants in regard to the recreational area and will incorporate it into her revision of the draft decision.

The Board then discussed the Background section and several issues discussed in the Findings of Fact and Conditions of Approval in the draft decision, dated June 7, 2009, as written by Attorney Quirk. Her comments and Board discussion were on the following sections:

Commercial Spaces – The language concerning the number of commercial spaces, up to three suites, and with an area up to 2500 square feet is acceptable to both parties.

Sewer and Water - Attorney Quirk is requesting the final sheets of plans for the water and sewer by Metcalf & Eddy in order that they can be incorporated into the decision and that the correct and final plans can be referenced in this section.

Water and Energy Conservation – The Board discussed these issues with the applicant.

Wetlands – This condition deals with who is making the representation that there are no wetlands in the area. Attorney Quirk indicated that it was the applicant because it is the applicant’s application. The applicant wants the representation to be from the Conservation Commission. The issue was briefly discussed.

Stormwater Control – This issue of whether the stormwater plans are found to be appropriately designed to comply with the standards of the Department of Environmental Protection will be addressed when the stormwater plans and operations and maintenance plan are peer-reviewed by the CCC. The language was briefly discussed by Attorney Mitchell and Attorney Quirk.

Parking – The Board will not require a turnaround at the end of each field, against the recommendation of the CCC. The Board discussed the parking issue with the applicant, who prefers to provide their own plan for controlling the parking spaces on site. TCB will provide their plan before the next hearing of the Board for its review.

Laundry Facilities - The applicant would prefer that the laundry facilities be dealt with by their property manager.

Rental of Parking Spaces - The Board discussed the issue of the rental of parking spaces and informed the applicant that it does not want the site to turn into a commercial parking lot now or at any time in the future. The Board will wait to look at a lease for rental units that TCB has used in previous projects and the applicant’s parking plan before the next hearing.

Recreational Area - The applicant agreed to provide a recreational area.

Traffic Issues - The Board will not require traffic islands, contrary to the recommendation of the CCC, and will paint arrows on the roadway to indicate the direction of traffic flow.

Signage - The issue was discussed earlier.

Maximum Units – There will be 25 one-bedroom units, 21 two-bedroom units and 4 three-bedroom units, for a maximum of 79 bedrooms on the site.

Affordability – The discussions continue on this condition. Attorney Mitchell does not want language that will conflict with the applicant’s funding source requirements.

Fire Safety – Attorney Quirk inquired whether the Fire Chief has seen a revision of and has approved the plans per his request for changes. David Gardner cannot confirm this. He will contact the Fire Chief and confirm this.

Future Maintenance – Attorney Mitchell stated that there is an operations and maintenance plan in place and therefore in conformance with this condition. Attorney Quirk recommended that there be evidence of service contracts before occupancy permits are issued. The Town will be responsible for trash pick-up.

Landscaping – The Board had requested shallow-rooted plantings only. They discussed the landscaping plan with the applicant.

Play Area – Attorney Quirk will revise this per the request of the Board.

Lighting – Attorney Quirk advised the Board to examine the applicant's lighting plan and see if it is acceptable.

Monitoring Plan – The Board will rely on the AUL, which dictates what is to be done, and the applicant will comply with it.

Construction Activity – This activity will conform to the Town's current by-law.

Construction Fill – According to Mr. Longo, there is a note about that on the plan. The vendor for the fill certifies that the fill is clean.

Attorney Quirk will e-mail the Board a copy of Attorney Mitchell's comments on this draft, the so-called strike-through copy, for them to peruse.

Anne Howard moved to continue Case #2009-20 until June 18, 2009 at 6:00 P.M., Robert Littlefield seconded and it was so voted, 5-0.

2009-30 **50 Bradford Street (General Commercial Zone), Evangelos Lambrou –**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to request an increase in seating (13 indoor seats existing and 90 outdoor seats proposed) pending the approval of an Economic Development Permit for additional seating. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. This case is continued until the June 18, 2009 hearing.

Patrick Eeley announced the following agenda item:

2009-11 **83 Shank Painter Road (General Commercial Zone), CHR 83 SPR, LLC -**
The applicant seeks a Comprehensive Permit under M.G.L. c. 40B, s. 21 to renovate an existing structure on a 14,000 square foot lot to reconfigure its floor plans to convert its existing fifteen bedrooms to twelve efficiency apartment, including two handicapped-accessible units, and three one-bedroom apartments, including one handicapped-accessible apartment, all to be operated as permanently affordable rental housing. The structure presently includes a commercial use as a portion of the first floor and basement, which will be separated through condominium conversion, designated as Unit A of the condominium as a separately-owned space with commercial use. The rest of the structure will be designated as Unit B of the condominium, consisting of all of the fifteen affordable units. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Presentation: Ted Malone and Attorney Peter Freeman appeared to discuss the application. Mr. Malone submitted building plans that had been stamped by his architect, per the request of the Board. He then explained some slight revisions he has made to the plans, including the creation of more green space on the north area of the property, a new location for the mailbox, correcting a window inconsistency in Units 2G and 2A on the third floor plans and a full-sized basement plan, dated May 21, 2009, with a delineation of the proposed storage space.
Board Discussion: The Board and Attorney Quirk questioned Mr. Malone and Attorney Freeman. They discussed the revised draft decision written by Attorney Quirk, dated June 6, 2009, which is based

upon previous discussions and recommendations of the Board. Mr. Malone indicated that he would like to rent the extra parking spaces at the site and to have commercial storage spaces in the basement. These issues were discussed. Mr. Malone claims that the storage activity will only be incidental. He is limiting the commercial storage area to a total of 700 sq. ft., requiring that two parking spaces be provided, which he already has available. After discussion with the Board, Mr. Malone would like to add a request for a permanent waiver from the Permitted Principal Uses by-law concerning rental storage, Article 2, Section 2440, B6 of the Zoning By-Laws, and the parking requirements for that commercial use. The Affordability section of the Findings of Fact and Conditions of Approval was briefly discussed and Attorney Quirk and Attorney Freeman will continue to work on this language. Changes in the sections pertaining to Local Preferences, Monitoring, Lighting and Plan Endorsement, agreed upon by both parties, were briefly mentioned.

The Board and Attorney Quirk then discussed the waivers requested in EXHIBIT C of the draft decision. Attorney Quirk went down the list to get the Board's consensus on granting or denying each waiver and she will subsequently revise the draft to reflect the Board's consensus on each waiver. Mr. Malone explained more about the Roof Design Standards waiver request to the Board.

Amy Germain moved to continue Case #2009-11 to June 18, 2009 at 6:00 P.M., Anne Howard seconded and it was so voted, 5-0.

PENDING DECISIONS:

- 2009-24** **32 Bradford Street (Residential 3 Zone), Robert Valois, on behalf of Enco Realty, Inc. –**
2009-25 **32 Bradford Street (Residential 3 Zone), Robert Valois, on behalf of Enco Realty, Inc. –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases. The reading of the decision is postponed as the applicant has not yet submitted an engineer-stamped plot plan to the Board as requested.
- 2009-28** **284 Commercial Street (Town Commercial Center), Edward Fallas –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. The reading of the decision for this case is postponed.
- 2009-29** **329 Commercial Street (Town Commercial Center), Edward Fallas –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. The reading of the decision for this case is postponed.
- 2009-32** **5 Ryder Street (Ryder Street Parking Lot) (Town Commercial Center), Andy Pollack, d/b/a Provincetown Farmer's Market –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Elisabeth Verde read the decision. *Patrick Eeley moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0.*
- 2009-27** **364 Commercial Street (Town Commercial Center), Jill Vaughn –**
Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Elisabeth Verde read the decision. *Patrick Eeley moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0.*
- 2009-17** **359 Commercial Street (Town Commercial Center), Lester J. Murphy, Attorney on behalf of ATL Holdings, LLC, Todd W. Colpitts, Senior Vice-President –**
Patrick Eeley, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case. Patrick Eeley read the decision. *Anne Howard moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).*
- 2009-26** **359 Commercial Street (Town Commercial Center), Lester J. Murphy, Attorney on behalf of ATL Holdings, LLC, Todd W. Colpitts, Senior Vice-President –**
Patrick Eeley, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case. Patrick Eeley read the decision. *Anne Howard moved to approve the language as written, Amy Germain seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).*

2009-31 **141 Bradford Street (Town Commercial Center), James J. Sheehan and Rodney Johnson –**
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.
Anne Howard read the decision. *Elisabeth Verde moved to approve the language as written, Robert
Littlefield seconded and it was so voted, 5-0.*

**MINUTES: May 21, 2009 – Amy Germain moved to approve the language as written, Patrick Eleey seconded and
it was so voted, 5-0.**

NEXT MEETING: The next meeting will take place on June 18, 2009. It will consist of a Work Session at 6:00
P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 10:45 and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on ____ __, 2009.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2009

Patrick Eleey, Chair